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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,896	08/07/2003	Brett A. Latimer	46555-028	7815
20277	7590	09/15/2005	EXAMINER	
MCDERMOTT WILL & EMERY LLP 600 13TH STREET, N.W. WASHINGTON, DC 20005-3096				WILLIAMS, MARK A
ART UNIT		PAPER NUMBER		
3676				

DATE MAILED: 09/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/635,896	LATIMER ET AL.	
	Examiner Mark A. Williams	Art Unit 3676	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 6/29/05.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 14-16 and 18-28 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 14-16 and 18-28 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 23-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 23, a third biasing member, wherein...the locked position" is not clearly understood in the context of the claims. It is not clear exactly what elements constitute this structure.

3. Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The terms "second biasing member" and "third biasing member" in claims 23-28 are used by the claims to

mean a grip portion and an angled surface, respectively, while in the art the accepted meaning of the term bias generally relates to providing an elastic force of some type. The term is indefinite because the specification does not clearly redefine the term.

Drawings

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the third biasing member being an angled plate portion of the hinge plates of claims 23 and 28 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the

several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 23-28, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Wenger, US Patent 3,143,185. See figures 1 and 2. A foldable ladder having locking hinge connecting a rail of an upper ladder section to a rail of a lower ladder section and configured to allow the lower ladder section to fold relative to the upper ladder section, wherein when the upper ladder section and the lower ladder section are fully unfolded, the locking hinge being adjustable

between at least two configurations, in a first configuration, the locking hinge completely preventing the lower ladder section from folding relative to the upper ladder section, and in a second configuration, the locking hinge allowing the lower ladder section to fold relative to the upper ladder section; wherein the locking hinge comprises a hinge latch 16 positioned between the first and second opposing hinge plates (3, 4), the hinge latch comprising an angle latch portion 26 and the hinge latch being movable between a locked position and an unlocked position, wherein biasing the hinge latch from the locked position to the unlocked position adjusts the locking hinge from the first configuration to the second configuration; a plurality of hinge plates (1-4); a first biasing member 18 biasing the hinge latch towards the locked position; a second biasing member 21, wherein upon the hinge latch being in the unlocked position, the first biasing member being prevented by the second biasing member from biasing the hinge latch towards the locked position; and a third biasing member (20, 26), wherein upon rotational movement of the hinge plates the angled latch portion contacts the third biasing member allowing the first biasing member to bias the hinge latch towards the locked position.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 14, 15, and 18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Wenger, US Patent 3,143,185, in view of Donahey, US Patent 5,165,501. Wenger provides a foldable ladder configured for installation in an opening to provide access between one floor or space and another floor or space, comprising an upper ladder section having at least one rail; a lower ladder section having at least one rail; a locking hinge 37 connecting the rail of the upper ladder section to the rail of the upper ladder section and configured to allow the lower ladder section to fold relative to the upper ladder section, wherein when the upper ladder section and the lower ladder section are fully unfolded, the locking hinge adjustable between at least two configurations, in a first configuration, the locking hinge completely preventing the lower ladder section from folding relative to the upper ladder section, and in a second configuration, the locking hinge allowing the lower ladder section to fold relative to the upper ladder section. A total length of

the foldable ladder is approximately equal to or greater than a length of the upper section plus a length of the lower section, as claimed.

Wenger does not explicitly teach a second hinge connected to the upper ladder section to fixedly attach to a member associated with the opening, as claimed. Donahey teaches this concept as additional means for supporting the ladder. It would have been obvious at the time the invention was made for one skilled in the art to have included in the design of Wenger such a modification, such as generally taught by Donahey, for the purpose of providing additional means for supporting the ladder.

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9. Claims 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wenger in view Donahey in further view of Gould et al., US Patent 4,823,912. Wenger does not explicitly teach the claimed bracket member. Gould teaches such a bracket member for the purpose of providing additional means for securing a ladder. It would have been obvious at the time the invention was made for one skilled in the art to have modified the device in this way, for the purpose providing additional securing means.

Response to Arguments

10. Applicant's arguments with respect to claims 14-28 have been considered but are moot in view of the new ground(s) of rejection. New art has been applied meeting the amended claims limitation of a second hinge.

Conclusion

This action is non-final.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Williams whose telephone number is (571) 272-7064. The examiner can normally be reached on Monday through Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mark Williams
9/11/05



Suzanne Dino Barrett
Primary Examiner